

EX PARTE OR LATE FILED
KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

ORIGINAL

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, NY
LOS ANGELES, CA
MIAMI, FL
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MANILA, THE PHILIPPINES
MUMBAI, INDIA
TOKYO, JAPAN

FACSIMILE

(202) 955-9792

WRITER'S DIRECT LINE

(202) 955-9608

WRITER'S E-MAIL

saugustino@kelleydrye.com

January 5, 1999

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RECEIVED

JAN - 5 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Deployment of Wireline Advanced Telecommunications Service
Capabilities, CC Docket 98-147

Dear Ms. Salas:

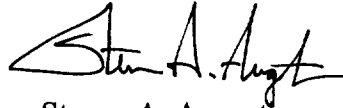
Pursuant to Section 1.1206 of the Commission's rules, the Competitive Telecommunications Association ("CompTel"), by its undersigned counsel, hereby gives notice that today, Genevieve Morelli, Joseph Gillan and the undersigned met with Larry Strickling, Chief of the Common Carrier Bureau, Jordan Goldstein and Michael Pryor of the Common Carrier Bureau, to discuss the above-captioned proceeding. The attached materials summarize the presentation.

KELLEY DRYE & WARREN LLP

Ms. Magalie R. Salas
January 5, 1999
Page 2

In accordance with Section 1.1206(b), an original and one copy of this notice is being provided.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large, sweeping initial "S" and a long, horizontal flourish extending to the right.

Steven A. Augustino

SAA:pab

Enclosures

cc: FCC staff members listed above

**BellSouth's CLEC Affiliate Proposal Violates
Basic Preconditions to Achieving a Truly Separate Affiliate
(CC Docket 98-147)**

- I. An ILEC affiliate is only "truly separate" if the affiliate experiences the same incentives and confronts the same barriers as any independent CLEC.**
- A. The threshold requirement to ensuring that an affiliate is "truly separate" is substantial independent ownership.
1. Independent ownership establishes a fiduciary obligation to maximize the value of the CLEC affiliate as a stand-alone enterprise.
 2. Restricting management compensation and stock options/bonuses to the performance of the publicly traded stock is necessary to appropriately align management incentives.
- B. If there is *any* significant common ownership between the affiliate and the ILEC, *all* inter-affiliate transactions must occur at cost-based rates available to any independent CLEC to prevent discrimination.
1. Common ownership permits any non-cost component in a transfer price between the ILEC and its affiliate to be offset when profits/losses are consolidated by the corporate parent.
 2. Cost-based transfer prices are necessary to accurately reflect the real cost incurred by the corporate parent. ILECs should only be allowed to conduct cost-based transactions with their affiliates. An ILEC's CLEC should be limited to providing service using unbundled network elements (UNEs) purchased from the ILEC.
 3. Section 251(c)(4) service resale by an ILEC affiliate is not a cost-based transaction and therefore should be prohibited. Service resale uniquely advantages the ILEC affiliate and is inherently discriminatory. Only an ILEC affiliate using service resale:
 - a. profits from operating as an uncompensated

marketing agent for the ILEC's access service.

- b. is unaffected by the inadequacy of the wholesale discount.
 - c. benefits from the inability to differentiate its local services from those of the ILEC because it *wants* to be perceived as the incumbent.
- C. The ILEC and its affiliate must be prohibited from joint marketing to assure independent behavior.

II. The BellSouth Proposal creates a "sham" CLEC, indistinguishable from the ILEC in every material way.

- A. BellSouth's proposed CLEC would be a wholly-owned affiliate with the same financial interests as the corporate parent and the ILEC.
- B. BellSouth's proposal would allow the ILEC and CLEC to engage in every possible type of discriminatory transaction.
 - 1. The BellSouth ILEC would be permitted to obtain any service/facility from its CLEC affiliate, exempt from a nondiscrimination obligation.
 - 2. The BellSouth CLEC could negotiate *any* arrangement with the ILEC, subject only to the requirement that the agreement be available to other CLECs. Independent CLECs would enjoy none of the negotiating protections of the Act:
 - a. Section 252 requirements for cost-based rates would not apply.
 - b. CLECs could not invoke Section 251 arbitration procedures to resolve disputes.
 - c. A requirement that BellSouth must extend the same non-cost based arrangement to non-affiliated CLECs does nothing to prevent discrimination.
 - 3. BellSouth's ILEC and CLEC affiliate would be permitted to engage in joint

marketing and joint billing -- effectively appearing in the market as a single entity.

4. BellSouth could transfer anything -- up to and including its customer base -
- to its CLEC affiliate.

C. BellSouth's affiliate proposal could be used to deny entrants access to new network investment and advanced facilities.

1. Although BellSouth's proposal would permit advanced capabilities to be integrated into the existing network to achieve scale and scope economies, but without the clear application of Sections 251/252, BellSouth would not be obligated to share these efficiencies with other providers.
2. BellSouth could choose to place *any* new investment in the its CLEC affiliate to avoid its Section 251/252 obligations.
3. BellSouth's proposal allows the ILEC to define which services are "advanced services" and subject to its CLEC proposal.



It's not like we got into this
business yesterday.

Today, we're moving into Tampa Bay.

For more than 100 years, BellSouth has been a major player in the telecommunications business and few people in the world understand connecting people the way we do. Which is why we think you'll find our new Ericsson digital wireless system so remarkable. It offers the clearest, most reliable wireless service available, not to mention a home phone option which virtually ends phone tag. Call 1-888-432-1998 today to see what we can do for you. BellSouth BSE. We want to be your phone company.

 **BELLSOUTH®**

© 1998 BellSouth

Published in Florida Trend, December 1998